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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter of)

)
Amendment of Part 25 of the)
Commission's Rules to Establish)
Rules and Policies Pertaining)
to the Second Processing Round of)
the Non-Voice, Non-Geostationary)
Mobile Satellite Services)

IB Docket No. 96-220

To: The Commission

**REPLY COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute ("API"), by its attorneys and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission" or "FCC"), hereby respectfully submits these Reply Comments concerning views expressed by other parties that responded to the Notice of Proposed Rule Making ("Notice") released by the Commission on October 29, 1996 in the above-captioned proceeding.^{1/}

^{1/} Notice of Proposed Rule Making, FCC 96-426 (adopted October 29, 1996), 61 Fed. Reg. 690622 (December 31, 1996); Order Granting Extension of Time, DA No. 96-1989 (adopted November 27, 1996).

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I. REPLY COMMENTS

1. The Commission proposed in its Notice to allocate a service uplink for Little LEOs in the 459.000-460.000 MHz band ("the 459.000 MHz band"). API and several other participants filed Comments which strongly oppose adoption of the course proposed by the Commission because the 459.000 MHz band contains a 25 kHz channel which is allocated to the Petroleum Radio Service and is specifically dedicated for communications related to oil spill containment and clean up activities. 47 C.F.R. § 90.65(b). See, Association of American Railroads at 2; Clean Channel Association at 1; Garner Environmental Services, Inc. at 1; Industrial Telecommunications Association, Inc. at 3; Texaco at 1; Texas General Land Office at 2; U.S. Oil and Refining Co. at 1. API agrees with the views expressed by these other participants that oil spill containment and clean up operations would be severely undermined by adoption of the Commission's proposal.

2. API urges the FCC to recognize that other government agencies impose requirements for environmental protection and safe transportation of petroleum and petroleum products. See, e.g., 49 C.F.R. § 194, Appendix A. These requirements dictate that reliable communications must

be available in the event of an oil spill. For example, the National Transportation Safety Board ("NTSB") on September 6, 1996 adopted a Special Investigation Report in which the NTSB concluded that universal emergency radio communications are crucial to effective oil spill response operations.^{2/}

3. Similarly, the petroleum industry itself has developed detailed recommendations for oil spill containment and clean up operations. These recommendations recognize the pivotal role of immediate and compatible communications for spill containment and clean up operations. For example, the 459.000 MHz channel has been recommended in The American Standard Testing and Materials "Guide for the Selection of Communications Systems for Oil Spill Response." See, Garner Environmental Services, Inc. at 1-2.

4. Thus, numerous private companies and non-profit entities which respond to oil spills rely upon the 459.000 MHz channel as a central component of their oil spill response communications plan. These entities have purchased valuable equipment which operates on the 459.000 MHz channel. In addition, these entities regularly

^{2/} "Evaluation of Pipeline Failures During Flooding and of Spill Response Actions, San Jacinto River near Houston, Texas, October 1994" NTSB Pipeline Special Investigation Report, PB96-917004, NTSB/SIR-96/04, adopted September 6, 1996. See, Texas General Land Office at 1.

conduct training drills utilizing that equipment. To designate the 459.000 MHz band for Little LEOs would unfairly jeopardize these oil spill response preparations.

5. Moreover, API strongly believes that sharing the 459.000 MHz band with Little LEOs or other unrelated energy industry eligibles is not a viable alternative to outright reallocation. Under a co-primary, sharing scenario, oil spill response organizations would be forced to contact Little LEO operators or others at a time when the oil spill containment and clean up channel is needed with immediacy. Little LEOs would then need to terminate their transmissions on the 459.000 MHz band. This process of contacting Little LEO licensees and then waiting for their termination of service could result in significant, and unacceptable, delays in establishing requisite communications for oil spill containment and clean up operations.

6. Such delays are simply antithetical to emergency operations. As noted by the Texas General Land Office, "successful oil spill response depends upon rapid mobilization of resources." Texas General Land Office at 1-2. Unless oil spill response organizations can rely upon immediate access to the oil spill containment and clean

up channel in the 459.000 MHz band, then that channel is not suitable for their emergency response plans.

7. API agrees with AAR that the Commission should not consider shared use of any land mobile radio bands by Little LEOs:

[U]nless and until it has been demonstrated, through properly conducted sharing studies, that such transmissions will not cause interference to land mobile communications. The various sharing analyses that have been performed to date have not established that such sharing is feasible and that such interference will not occur.

AAR at 2-3.

8. If the Commission nonetheless adopts its proposal to redesignate the 459.000 MHz band for Little LEO use, spill response organizations will be forced to pursue other spectrum options which must include primary status for oil spill containment and clean up communications. In that event, oil spill response organizations likely would also need to purchase new equipment and conduct numerous training exercises with that equipment. This is because, as pointed out by U.S. Oil and Refining Company in its Comments, compatibility of equipment is "crucial to rapid response to oil spill emergencies and provides for effective mutual aid

plans and equipment sharing nationwide." U.S. Oil and Refining Company at 1. As ITA noted, "Without access to the type of communications available using UHF radios in the 459.000 MHz band . . . such coordination [of response activities] would be far more difficult and much less effective." ITA at 4.

9. Many of the oil spill response entities are mutual aid organizations and similar non-profit associations. API believes it would be unfair to compel any entity with oil spill response investments, particularly non-profit groups, to replace their existing equipment and re-train their personnel without reimbursement from the Little LEO industry and a guarantee by the Commission of suitable alternative spectrum for communications related to oil spill containment and clean up operations.

II. CONCLUSION

10. Unlike Little LEO and other commercial communications services, oil spill containment and clean up operations provide essential public benefits that are not readily quantifiable in terms of subscribership and commercial gain. Instead, those private and non-profit entities that are responsible for responding to oil spill

emergencies measure their success in terms of protecting the public, petroleum industry workers, and the environment. API urges the Commission to preserve the 459.000 MHz band for the communications which are so essential to oil spill containment and clean up operations.

WHEREFORE, THE PREMISES CONSIDERED, API respectfully requests the Federal Communications Commission to take action consistent with the recommendations made herein.

Respectfully submitted,

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